STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED TRANSIT UNION, LOCAL 587, Complainant,	)	CASE 15733-U-01-3989
vs.	)	DECISION 7506-A PECB
KING COUNTY, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Frank, Rosen, Freed, Roberts, by *Jon Howard Rosen*, Attorney at Law, for the union.

Norm Maleng, King County Prosecuting Attorney, by *Peter Rufatto*, Senior Deputy Prosecuting Attorney, and *Susan Slonecker*, Senior Deputy Prosecuting Attorney, for the employer.

On March 22, 2001, Amalgamated Transit Union, Local 587 (union) filed a complaint charging unfair labor practices with the Commission under Chapter 391-45 WAC, naming King County (employer) as respondent. A preliminary ruling was issued under WAC 391-45-110 on May 24, 2001, finding a cause of action to exist on allegations summarized as follows:

> Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by its termination of Mike Rochon in reprisal for his union activities protected by Chapter 41.56 RCW.

Examiner J. Martin Smith was designated to conduct further proceedings under Chapter 391-45 WAC. The employer filed a motion

for deferral to arbitration, which was denied in *King County*, Decision 7506 (PECB, 2002).[1] A hearing was held on June 4, 2002, before the Examiner. The parties filed post-hearing briefs.

The Examiner rules that the union has failed to establish that the employer discriminated against Michael Rochon in reprisal for his exercise of rights under Chapter 41.56 RCW, and no unfair labor practice has been established under 41.56.140(1). In addition, the Examiner rules that the union has failed to establish that Rochon or any other employee reasonably perceived the employer actions described in this case as threats of reprisal or force or promises of benefit associated with the exercise of rights under Chapter 41.56 RCW, so that no unfair labor practice has been established under RCW 41.56.140(1).

BACKGROUND

Among other services, the employer operates a public passenger transportation (bus) system.[2] The union is the exclusive bargaining representative of employees working in that public passenger transportation operation.

---

[1] The preliminary ruling letter acknowledged that the employer had volunteered an answer on April 17, 2001, but noted that the preliminary ruling process under WAC 391-45-110 is limited to a review of the complaint. Thus, the employer's answer was not considered in preparing the preliminary ruling, and the employer was advised that it could either file another answer or rely on its already-filed answer.

[2] The system was formerly operated by a "Municipality of Metropolitan Seattle" (METRO) until that entity was merged into King County during or about 1996. The parties have used "King County" and "METRO" interchangeably in this record.

Michael Rochon was hired by METRO in 1978, and was employed within the bargaining unit represented by the union at all times up to the discharge at issue in this proceeding. Rochon worked as a transit parts specialist in the Vehicle Maintenance Division. He was paid on an hourly basis, based on his submittal of time sheets initialed daily and signed weekly. Rochon was an active union member, who was a union shop steward for ten years, who sat on the union's Executive Board for five years, and who participated on a labor-management committee in the Vehicle Maintenance Division (VMLMC) for five years. Rochon was described as a "passionate" advocate whose intensity sometimes ruffled the feathers of managers.

Rochon was discharged on September 27, 2000, on allegations that he had given conflicting answers in a previous investigation, that he had misappropriated employer time and equipment for private purposes, and that the he had falsified time sheets.

Separate from this unfair labor practice proceeding, the union filed and pursued a grievance under the parties' collective bargaining agreement. That grievance was eventually submitted to final and binding arbitration. The resulting arbitration award reinstated Rochon, on the basis that the termination of his employment violated the "just cause" standard set forth in the parties' collective bargaining agreement. The arbitration award was issued on May 29, 2001.

POSITIONS OF THE PARTIES

The union urges the Commission to find the employer committed an unfair labor practice under RCW 41.56.140(1) by its discharge of Rochon. It contends union activities were a substantial motivating factor in the employer's decision to terminate Rochon's employment.

The employer urges that, even if Rochon was engaged in protected activity prior to his discharge, the employer's action was not the result of union animus. Rather than union animus, it argues that the discharge was motivated by the alleged misappropriation of METRO funds, the alleged falsification of METRO documents, the alleged misuse of METRO property, and the alleged dishonesty during the subsequent investigation.

DISCUSSION

This case involves statutory rights under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. An arbitrator has already decided the rights of the parties under the collective bargaining agreement they negotiated under that statute.[3]

Legal Standards

Chapter 41.56 RCW prohibits discrimination in reprisal for the exercise of collective bargaining rights:

> RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE. No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

---

[3] Even if the arbitration award had not been issued prior to the hearing in this case, the Examiner would not be deciding a "just cause" question. The Public Employment Relations Commission does not assert jurisdiction to remedy contract violations through the unfair labor practice provisions of the statute. *City of Walla Walla,* Decision 104 (PECB, 1976)

Enforcement of that statutory protection is through the unfair labor practice provisions of Chapter 41.56 RCW:

> RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED. It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
>
> (2) To control, dominate or interfere with a bargaining representative;
>
> (3) To discriminate against a public employee who has filed an unfair labor practice charge;
>
> (4) To refuse to engage in collective bargaining.

The authority to hear, determine, and remedy unfair labor practices is vested in the Commission by RCW 41.56.160.

The Supreme Court of the State of Washington has established a "substantial motivating factor" test for determining discrimination cases. *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991); *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991). A discrimination violation occurs under Chapter 41.56 RCW when an employer takes action as a reprisal against the exercise of rights protected by Chapter 41.56 RCW. *Educational Service District 114*, Decision 4361-A (PECB, 1994). Thus:

1. A complainant has the burden to establish a prima facie case of discrimination, including that:

   a. The employee has participated in protected activity or communicated to the employer an intent to do so;

   b. The employee has been deprived of some ascertainable right, benefit or status; and

   c. There is a causal connection between those events.

2. If a prima facie case is made out, the employer has the opportunity to articulate legitimate, nonretaliatory reasons for its actions.

3. The burden remains on the complainant to prove, by a preponderance of the evidence, that the disputed action was in retaliation for the employee's exercise of statutory rights. That may be done by showing that:

   a. The reasons given by the employer were pretextual; or

   b. Union animus was nevertheless a substantial motivating factor behind the employer's action.

See also Mansfield School District, Decision 5238-A (EDUC, 1996) and numerous subsequent cases applying the same test. Furthermore, WAC 391-45-270(1)(a) places the burden of proof upon a complainant in any unfair labor practice case.

Application of Standard - The Prima Facie Case

Exercise of Protected Right -

The Examiner finds that the union clearly satisfied the first element of its prima facie case.

- The sequence of events leading to the disputed discharge began on June 9, 2000, when Rochon was present at his worksite to attend a meeting with management personnel on a grievance involving another bargaining unit employee.

- Although Rochon was not scheduled to work on June 9, 2000, it was determined at some point that he would be a "material witness" in the grievance proceedings. Under the terms of the parties' collective bargaining agreement, Rochon was then paid for attending the meeting.

- Shortly after the grievance meeting on June 9, 2000, supervisory employee George Gay observed Rochon and an on-duty employee, Paul Bozoti, working at an employer-owned computer in a storeroom near the area where the meeting had been held.[4] It appeared as if Bozoti was providing information that Rochon was keyboarding into a document, and Gay suspected they were working on a personal letter.

- Rochon was working on a document regarding a grievance (in his role as a member of the VMLMC and/or as a union steward) when Gay observed him using a computer. Notwithstanding an employer policy that generally forbids employees from using employer-owned computers for non-work purposes, the employer had previously permitted Rochon to use its computers for grievance processing.

Thus, Rochon was exercising rights protected by RCW 41.56.040 when he was observed at the employer-owned computer on June 9, 2000.

Deprivation -

The union has also established that Rochon was deprived of an ascertainable right, status, or benefit. He was clearly deprived of both pay and benefits by the termination of his employment. Discharge is the classic form of discrimination outlawed by collective bargaining laws, when based upon union activity. *Renton Technical College*, Decision 7441 (PECB, 2001).

Causal Connection -

In previous cases where the Commission has found a causal connection to exist, there has generally been evidence of employer anti-union animus, such as:

---

[4] Exhibit U-7 depicts two stand-alone computers being open and available on desks near the counter of the shop area.

- In *Mansfield School District*, the superintendent of schools exhibited strong anti-union sentiments through statements to a union activist in which he indicated that he saw her as the union, and that he would break her in order to break the union. Further support for finding an anti-union animus in that case was found in remarks made by the same employer official to the effect that he and his wife were not in favor of unions, and to the effect that unions were unimportant and a barrier to direct dealing with individuals.[5]

- In *City of Winlock*, Decision 4783-A (PECB, 1995), the employer vigorously opposed a representation petition, and an employer official told a union adherent, "You're making [the mayor] crazy with this union thing." Testimony concerning employer comments about "union problems" and that the employer was "dealing with the union matter" indicated a negative reaction to employees' exercise of protected activity.

- In *City of Federal Way*, Decision 4088-A (PECB, 1993), *aff'd*, Decision 4088-B (PECB, 1994), an employer's letters to employees as part of a vigorous anti-union campaign leading up to an election supported an inference of union animus.

- In *Educational Service District 114*, the employer engaged employees in discussions about the need for a union, had commented to a union activist that she had become a "rebel," and warned an employee of adverse consequences if he persisted in union activity.

Thus, union animus can be inferred from a wide variety of employer behavior.

---

[5] Additionally, an inference of union animus was supported in that case by the record in an earlier unfair labor practice proceeding.

In this case, the record discloses that Rochon was often sought out by union members and management alike, because of his expertise on contract issues.[6] He spent considerable time on union matters. When Rochon was once given a written warning for conducting union business after a VMLMC meeting, the resulting grievance was settled by allowing union members of that committee 20 minutes "on the clock" to discuss matters with bargaining unit employees following VMLMC meetings. Moreover, Rochon had come to believe that he had some leeway in conducting union business after meetings with management, and that he was not engaging in prohibited "private business" when he did so.[7]

The employer's investigative methods were sufficiently suspect to support an inference adverse to the employer.

- Gay did not say anything to Rochon or Bozoti at the time he observed them using the computer, and instead discussed his observation with Doug Daniels, another supervisor.

- Rather than confronting the situation (and with an intent of reprimanding the employees if the document turned out to be a personal letter), Daniels told Gay to send Bozoti back to work and check out the situation with a third supervisor, Heather Kilborn. In the name of avoiding avoid upset of other employees in the department, Daniels suggested that examination of the computer take place the next day, a Saturday. Thus, Gay and Kilborn (who had some experience with computers)

---

[6] Between February 17, 1988, and May 10, 2000, Rochon had filed 21 grievances.

[7] Rochon was aware of an employer policy that required him to charge his time in a certain way on his time sheets whenever he was conducting union business or to handle union business on his own time, but he testified that was not the actual practice.

logged-on to the computer that Rochon had been using on June 10, 2000. They attempted to find Rochon's document by calling up the most recent documents, but no documents were listed. They next checked the "Recycle Bin" and found it was also empty. They next used "*.doc" to search for all documents, and hundreds of documents came up. Surprised by the number of documents, and noticing that many of them had titles suggesting they were not work-related,[8] Gay and Kilborn downloaded many of the documents to disks.

- Initially, Gay and Kilborn could not tell who had created the documents, so they created a table listing the file names, and the dates and times the files were created and edited. They then requested payroll time slips for the dates and times when the files were created and modified.[9]

- The questioning of Rochon appeared to ignore past practices which had been followed for some time. Kilborn was instructed by Gay to interview the employees who had created the documents, including Rochon. Kilborn and Gay developed a standardized series of questions to ask the employees about the documents, and supervisor Jeff Sattler sat in as a witness and note-taker. Many of the documents appeared to have been created by Rochon over a span of more than 26 hours of the employer's time.

Rochon was interviewed months later, in September of 2000, with a union representative in attendance. Rochon was told that any false statements made in response to the questions asked could lead to

---

[8] The employer has a policy against employee use of its computers for non-work-related purposes.

[9] Terms such as "witch hunt" or "hidden agenda" come to mind when reviewing such facts.

disciplinary issues, and Rochon admitted to working on some of the documents during work time. Rochon claimed, however, that he had created most of the questioned documents at his residence, and merely brought them to work to spell-check or edit. Rochon then admitted he had used the storeroom computer for non-work related business for substantial blocks of time while on-the-clock, estimating that he worked on several of the newsletter articles for approximately 45 minutes each.

Rochon was interviewed twice more, on September 14, 2000, and on September 21, 2000. In addition to the employer apparently having conducted more interviews of the union activist than of other employees, it is at least curious that Rochon's activities that had seemingly been condoned or even authorized by the employer were not distinguished from other matters.

There is some evidence of disparity of treatment between Rochon and other employees. METRO employees (including supervisors and managers) routinely use their METRO computers for personal uses such as checking e-mail, following investment portfolios online, and accessing the internet for personal reasons. Other METRO employees have been disciplined for using METRO property for non-work reasons, but generally with sanctions less severe than the discharge imposed on Rochon.[10]

The relationship between Rochon and his manager also provides some basis for concern. The manager of vehicle maintenance, Jim Boon, was sometimes "upset" when comments he made in VMLMC meetings "ended up in the union newsletter." Those meetings could range from "working very well" to being "highly adversarial" depending on

---

[10] At least one employee was discharged for misuse of METRO property.

the behavior of Boon and Rochon on the particular day, as numerous witnesses testified about the heated debates that occurred at VMLMC meetings. Other evidence indicates that Boon had referred to Rochon and two other union representatives as "The Wolf Pack."[11]

The Examiner's conclusion from the entire record is that, although the evidence is by no means overwhelming, the union has provided the minimum necessary to make out a prima facie case.

Application of Standard - The Employer's Defense

The employer has articulated legitimate, nonretaliatory reasons for its actions with regard to this employee. The fact that Rochon used the employer's computers technically in violation of the policy was stipulated by the parties at the hearing. The employer also stated that it discharged Rochon because he committed several major infractions of the employer's policies that rose to the level of "gross misconduct" under the parties' collective bargaining agreement:

- By his own admission, Rochon used the employer's computer to create numerous non-work related documents.
- Again by his own admission, Rochon coded time he spent on such documents as regular work time on his time sheets, triggering the employer's "misappropriation of funds" allegation.
- Rochon was dishonest during the investigation (after being warned that any dishonesty on his part could lead to disci-

---

[11] The choice of phrase may have fairly reflected the campaign promises made by the members of the group when they campaigned for positions on the union's executive board. Michael Whitehead, one of the "pack" members, testified that they had campaigned on a promise to engage in more aggressive member representation.

pline), inasmuch as the computer word processing program was used to disprove Rochon's claim that the majority of the documents had been created and completed at home with just minor changes made on the employer's computer.

Thus, the analysis must turn back to the evidence and arguments advanced by the union in this case.

Application of Standards - The Union's Ultimate Burden

Moving from the "prima facie" level to the "burden of proof" level is not automatic, and the Examiner concludes that the union has not sustained its burden of proof in this case.

The Investigation Process -

The Examiner does not accept the union's contention that union animus can be inferred by the employer's "exhaustive" investigation of Rochon. Kilborn was searching for a particular document, as instructed, but discovered a much broader range of misconduct than was initially suspected. Several disks were brought back to Daniels, containing hundreds of documents found on the employer-owned computer that Rochon was using on June 9, 2000. The questionable documents were in plain view in the computer's directory, and many had titles which indicated they were not work-related. As a supervisor, Kilbourn had a duty to report what appeared to be a massive misuse of the employer's computer system. Rochon himself testified that he did not believe that Kilborn harbored any anti-union sentiment.

This situation is clearly distinguishable from a fishing expedition conducted on private property in violation of constitutional protections against unreasonable search and seizure, and analogies

to criminal law are inapt. Long-standing Commission precedents reject the notion of an employee right to use employer facilities for private purposes. *City of Seattle*, Decision 1355 (PECB, 1982) [Donald Wakenight v. City of Seattle], and see Article VII, Section 7 of the Washington State Constitution.

Rochon Knew or Should Have Known His Behavior Was Wrong -
By reputation and behavior, Rochon was an individual well-versed and well-respected regarding his knowledge of the employer's policies and procedures. That both provides basis for an inference that Rochon wrote the unauthorized documents with full knowledge that he was misusing the employer's computer system, and defeats any suggestion that Rochon acted negligently or accidentally.

Conclusion Regarding Discrimination Claim -
The Examiner rules that the reasons asserted by the employer for its disciplinary action were not pretextual. The arbitrator's ruling that the employer lacked "just cause" for the discharge does not compel a different conclusion, as the Examiner must make an independent determination based on the evidence in this record. The Examiner further rules that the union has not provided evidence sufficient to support a finding that union activity was a substantial motivating factor in the discharge decision. Thus, the allegation that the employer discriminated against Rochon must be dismissed.

The Interference Allegation

The reference to RCW 41.56.140(1) in the preliminary ruling can be interpreted as merely laying the groundwork for finding a "derivative" interference violation if a discrimination violation were to be found. Under that interpretation, the failure of the union to

establish the discrimination allegation, as discussed above, would provide basis for a simple dismissal of the interference theory.

An alternative interpretation of the preliminary ruling is that some independent interference violation was contemplated. If that was the intention, the standard for deciding such claims is quite simple and straightforward in contrast to the complex standard and procedure for evaluating "discrimination" claims: An "interference" violation will be found under RCW 41.56.140(1) if an employer action is reasonably perceived by employees as a threat of reprisal or force or promise of benefit associated with the pursuit of lawful union activities protected by RCW 41.56.040. *City of Tukwila*, Decision 4968 (PECB, 1995); *Skagit County*, Decision 6348 (PECB, 1998). It is not necessary to show that the employer acted with intent or motivation to interfere, nor is it necessary to show that the employee(s) involved actually felt threatened or coerced. *Kennewick School District*, Decision 5632-A (PECB, 1996). The determination is based on whether a typical employee in the same circumstances could reasonably see the employer's actions as discouraging his or her union activities. An employer's innocent, or even laudatory, intentions when taking in disputed actions are legally irrelevant. *City of Seattle*, Decision 3566-A (PECB, 1991). Thus, although claims of unlawful interference with the exercise of rights protected by Chapter 41.56 RCW must be established by a preponderance of the evidence, the standard is not particularly high. See *City of Mill Creek*, Decision 5699 (PECB, 1996), and cases cited therein.

Cases where the Commission has found an interference violation include *Washington State Patrol*, Decision 4757-A (PECB, 1995) [employer "directed" an employee to sign a settlement and waiver agreement with respect to discipline], and *King County*, Decision

6994-C (PECB, 2002) [communication by a supervisory employee disparaged the union by reference to intervention of "third parties"].

Application of Standard-

The record in this case is completely devoid of any evidence of any fear of employer reprisal of any kind by any of the employee witnesses. There is no basis for an inference of concern on the part of any witness that the employer's actions ever discouraged their present or future union activity.

By his own admission, Rochon had engaged in "substantial" misuse of the employer's computer system. None of the employees investigated other than Rochon had engaged in the "substantial" amount of non-work related personal business that Rochon had done.

Rochon was the only witness who expressed an opinion that Boon displayed any union animus. None of the other union witnesses testified that they believed Boon's attitude stemmed from union animus.

Commission precedent indicates that Rochon may need to develop a thicker skin. The Commission stated:

> Union officials should be accustomed to controversial situations, and can be expected to receive and interpret harsh words, criticism, and displeasure. For this reason, a local union president needs to be less worried about coercion and threats than does [a rank-and-file employee] attending his or her first bargaining session. The longer a union official is involved in representing the interests of bargaining unit employees, the less reasonable are their claimed perceptions of threats and coercion. This acquisition of thicker skin has been recognized by the National Labor Relations Board in cases such as *Premier Rubber Co.*, 272 NLRB 466; 117 LRRM 1406

> (1984), where the employee who claimed to have been "targeted" overtly supported the union, and where the employer's alleged questions about attendance at union meetings or negative comments about his union badge were found to be innocuous questions and non-coercive expressions of opinion.

City of Renton, Decision 7476-A (PECB, 2002). As in that case, Boon's comments were opinions, not policies, and were in response to Rochon's opinions, not any particular action on Rochon's part. None of the comments made by Boon were coercive or threatening, if taken in the context of delivery between a department head and a union representative. No discipline, either actual or implied, was ever meted out against Rochon regarding the heated discussions that took place at VMLMC meetings. Additionally, all of Rochon's performance evaluations were positive. Although Rochon consistently filed a large number of grievances, they were dealt with for the most part at a fairly low level, and the majority in his favor.

Boon himself testified that he viewed Rochon as the "brightest member in the union short of the union president." Even if Rochon's vigilance frustrated Boon at times, Boon believed it was good for the process.

The union has not provided evidence sufficient to support a finding that Rochon or any other employee represented by the union reasonably perceived the employer's actions as threats of reprisal or force or promises of benefit associated with their exercise of rights under Chapter 41.56 RCW.

FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.020.

2. Amalgamated Transit Union, Local 587, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of King County employees engaged in the operation and maintenance of a public passenger transportation (bus) system providing service in and around King County.

3. Michael (Mike) Rochon was hired by the employer on November 27, 1978, and was within the bargaining unit represented by the union. Rochon was an hourly employee working as a Transit Parts Specialist in the vehicle maintenance division of the transportation division, and was paid by submitting time sheets initialed daily and signed weekly. Rochon was an active union member, union Executive Board member, union representative on the Vehicle Maintenance Labor Management Committee, and a union shop steward. Rochon was known as a "passionate advocate" whose intensity sometimes ruffled the feathers of management.

4. Rochon was often sought out by union members and management alike, for his expertise on contract issues and spent a lot of time on union business.

5. Although there is evidence that Jim Boon, the manager of vehicle maintenance, was sometimes upset when comments made in the VMLMC meetings "ended up in the union newsletter," the evidence does not support a conclusion that Boon harbored ongoing union animus concerning Rochon.

6. As a result of a grievance settlement, union representatives were allowed 20 minutes after a Vehicle Maintenance Labor Management Committee meeting to discuss union matters with bargaining unit employees while still on the clock.

7. The employer has a policy against using King County computers for non work-related purposes, but employees (including supervisors and managers) routinely use the employer's computers for personal uses such as checking e-mail, following investment portfolios online, and accessing the internet for personal reasons. Disciplinary sanctions up to and including at least one discharge have been imposed on employees in the past for using the employer's property for purposes unrelated to their assigned work.

8. On June 9, 2000, Rochon was on the employer's premises for a meeting concerning a grievance. As a result of his role in the processing of that grievance, he became entitled to pay for his time. After the grievance meeting concluded, Rochon and another employee used an employer-owned computer in a storeroom to prepare some document.

9. A supervisory employee, George Gay, observed the computer usage described in paragraph 8 of these findings of fact, and suspected that Rochon and the other employee were working on a personal document. Gay reported his observations to Doug Daniels, a supervisor in the department. Daniels told Gay to send the employee who was working with Rochon back to work, and to check out the situation, with the intent of orally reprimanding the employees if the document turned out to be a personal letter.

10. Daniels directed Gay and another supervisor, Heather Kilborn, to examine the computer used by Rochon. That examination took place on the next day, Saturday. Gay and Kilborn found a large number of documents that appeared to be of a personal nature, and downloaded hundreds of such documents to disks which they provided to Daniels. Gay and Kilborn also created

a table listing the file names and the dates/times the files were created and edited, and they requested payroll records to review for the purposes of correlating the dates and times with employees.

11. Many of the documents discovered as described in paragraph 10 of these findings of fact had been created by Rochon over a span of more than 26 hours of employer-paid time. None of the other employees investigated had engaged in the amount of non-work related personal business that Rochon had done.

12. Kilborn was instructed to interview the employees who had created the documents, including Rochon. Kilborn and Gay developed a series of uniform questions to be asked of the employees about the documents, and another supervisor, Jeff Sattler, sat in as a witness and note-taker.

13. On September 6, 2000, Kilborn interviewed Rochon about the documents. Ed Mayes served as Rochon's union representative at the meeting. Rochon was told that any false statements made in response to the questions to be asked could lead to disciplinary issues. Rochon admitted to working on some of the documents during work time, but claimed that he had created most of them at home, bringing them to work to spell-check or edit. Rochon admitted, however, that he had used the storeroom computer for non-work related business for substantial blocks of time while on the clock, estimating that he worked on several of the newsletter articles for approximately 45 minutes each.

14. Rochon was interviewed again on September 14, 2000, and September 21, 2000. Rochon's answers did not conform with the research that Kilborn had performed, including historical

research performed by use of the Microsoft Word software that establish where the document was created, how long was spent writing it, how much it was edited and who the author was on each occasion.

15. The employer formed an opinion, based on its own research and Rochon's conflicting answers, that Rochon had misappropriated employer time and equipment for private purposes, falsified time sheets and lied about it during the investigation. The employer thus discharged Rochon on September 27, 2000.

16. On March 22, 2001, Amalgamated Transit Union, Local 587 (union) filed a complaint charging unfair labor practices with the Commission under Chapter 391-45 WAC, alleging that King County had interfered with employee rights and discriminated against Mike Rochon.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in these matters under RCW 41.56.140 and Chapter 391-45 WAC.

2. Amalgamated Transit Union, Local 587, has failed to sustain its ultimate burden of proof to establish that King County discriminated against Michael Rochon in reprisal for his exercise of rights under RCW 41.56.040, so that no unfair labor practice has been established under 41.56.140(1).

3. Amalgamated Transit Union, Local 587, has failed to establish that Rochon or any other employee represented by Local 587 reasonably perceived the employer's actions described in the foregoing findings of fact as threats of reprisal or force or promises of benefit associated with his exercise of rights

under Chapter 41.56 RCW, so that no unfair labor practice has been established under RCW 41.56.140(1).

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED on its merits.

Issued at Olympia, Washington, on the 8th day of April, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

J. MARTIN SMITH, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.